

EX PARTE OR LATE FILED

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DEC 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the) CC Docket No. 96-115
Telecommunications Act of 1996)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other Customer)
Information)

MEMORANDUM OF ORAL EX PARTE PRESENTATION

Pursuant to Section 1.1206 of the Commission's Rules and the Ex Parte Meeting Public Notice,¹ this memorandum summarizes an oral ex parte presentation made at the December 10, 1998 Ex Parte Meeting in the captioned docket. Over 40 people were present and an unknown number of other people were listening in on a speaker phone. The presentation was made by Susan Bahr of the law firm of Blooston, Mordkofsky, Jackson & Dickens, Washington, D.C., counsel for Radiofone, Inc. and CommNet Cellular Inc. (CommNet).

Both Radiofone and CommNet provide cellular and paging services and are concerned about the cost of compliance with any software requirements that the Commission may impose in its order addressing the pending petitions for reconsideration. Ms. Bahr's presentation concerned Bell Atlantic's and BellSouth's proposed revisions to Sections 64.2009(a) (flagging), Section 64.2009(c)

¹ Common Carrier Bureau Announces Ex Parte Meeting to Discuss Developing an Industry Coalition to Address Software Flagging and Electronic Audit Tracking Requirements of Customer Proprietary Network Information (CPNI), Public Notice, DA 98-2504, released Dec. 7, 1998 [hereinafter Ex Parte Meeting Public Notice].

No. of Copies rec'd 071
List A B C D E

(electronic auditing) and Section 64.2009(e) (annual certification) of the Commission's Rules (the "BOC proposal"). Assuming that the Commission would adopt rules similar to those in the BOC proposal rather than eliminating the software requirements altogether, Ms. Bahr made five suggestions.

First, the proposed changes to the flagging and electronic auditing requirements apply to outbound marketing, and assume that a carrier provides services from more than one "bucket."² That is, the rules do not consider the situation where a carrier provides all of its services from one bucket, such as a carrier that provides only paging and cellular service. There is no danger that such carriers will use CPNI to market services from a different bucket (such as local or long distance), because they do not provide those services. Thus, the proposed changes to Section 64.2009 (a) and (c) should state that the flagging and electronic auditing requirements apply only to carriers that offer services from more than one bucket. The text of any order adopted by the Commission should make this clear as well.

Second, Radiofone and CommNet support the proposal that carriers be permitted to keep track of a customer's CPNI approval status by some means other than an indication in the first few lines of the first screen of a customer's service record, as currently stated in Section 64.2009(a). The BOC proposal to

² The term "bucket" was used to mean one of the three categories of service identified by the FCC in Section 64.2005 of the Commission's Rules (i.e., local, interexchange and CMRS).

permit carriers to record this information "electronically or in some other way" would give carriers the flexibility to determine the method that is appropriate for their circumstances. Some carriers may not have electronic databases for their customer records, and may have only a paper-based system. Other carriers may have electronic systems but the cost of modifying their systems may be prohibitive. The BOC proposal would accommodate carriers in either situation.

Third, the option of using paper-based systems should apply also to the electronic auditing requirements in Section 64.2009(c). The proposed revision to that section would require carriers to record information concerning their marketing campaigns. There is no reason why such information could not be kept on paper.

Fourth, the proposed Section 64.2009(a) would require a carrier using a paper-based system to explain why it is doing so and why the paper-based process complies with Commission rules. This implies that the paper-based mechanism is inferior to the electronic mechanism. But there is no reason to be suspicious of paper-based mechanisms. Thus, this provision, which is the last sentence in proposed Section 64.2009(a), should be eliminated.

Finally, care should be taken to ensure that the terms used in any revised rules do not make assumptions about how carriers conduct their business. For example, proposed Section 64.2009(a) contains the phrase "centralized database" and proposed Section 64.2009(d) contains the phrase "centralized file of complaints."

These phrases assume that carriers already maintain such information on a centralized basis. But a carrier that has operations in two distinct cities may maintain its records in the separate cities, rather than in centralized locations. In particular, the CPNI approval status of its customers in the two separate cities, and any information concerning complaints filed with regulatory agencies, logically may be kept in the carrier's offices in the two separate cities. Requiring the carrier to maintain centralized files would unduly burden the carrier without any corresponding benefit. Thus, terms such as "centralized database" or "centralized file of complaints" should be replaced with more generic terms such as "database(s)" or "file(s)."

In sum, the presentation made two general requests:

- * Carriers that provide services that are in only one bucket should not be subject to the flagging and electronic auditing requirements.
- * The terms of any revised rules should give carriers the flexibility to determine how they will keep track of information about a customer's CPNI approval status or the carrier's marketing campaigns -- whether electronically or on paper, whether in a centralized location or decentralized locations.

Pursuant to Section 1.206 and the Ex Parte Meeting Public Notice, this memorandum and one copy are being submitted to the

Secretary, and copies are being delivered to Ceci Stephens and ITS.

Respectfully submitted,


Susan J. Bahr

Blooston, Mordkofsky,
Jackson & Dickens
Suite 300
2120 L Street, NW
Washington, DC 20037
(202) 659-0830

Attorney for Radiofone, Inc.
and CommNet Cellular Inc.

December 11, 1998